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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/938,751	08/24/2001	Armin Amrhein	A34487 071308.0210	4100

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EXAMINER

BAHTA, KIDEST

ART UNIT	PAPER NUMBER
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2125

DATE MAILED: 07/03/2003

9

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/938,751

Applicant(s)

AMRHEIN ET AL.

Examiner

Kidest Bahta

Art Unit

2125

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 4-6 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 4-6 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6, 8.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Priority

1. Acknowledgment is made of applicant's claim for foreign priority under 35 U.S.C. 119(a)-(d). The certified copy has been filed in parent Application No. 09938,751, filed on August 24, 2001.

Information Disclosure Statement

2. The information disclosure statement (IDS) submitted on August 8, 2001 and the English language translations of the abstract filed May 10, 2002 have been considered.

Specification

3. Acknowledgment is made of applicant's Preliminary Amendment of the substitute specification, Abstract and canceled claims 1-3 and newly added claims 4-6.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 4-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 4, line 12, the phrase "assigned system and/or user programs" lacks metes and bounds because it is unclear whether the phrase intended to claimed "assigned system and user programs" or "assigned system or user programs";

Claim 5, line 2, the phrase "system levels and/or user levels" lacks metes and bounds because it is unclear whether the phrase intended to claimed "system levels and user levels" or "system levels or user levels".

Claim 6, line 2, the phrase "the basic clock may be derived" lacks metes and bounds because it is unclear whether the basic clock is derived or not.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

6. Claims 4-6 are rejected under 35 U.S.C. 102(e) as being anticipated by Hoenninger et al. (U. S. Patent 6,260,058).

Regarding claims 4, Hoenninger discloses a method of programming cyclical machines, in particular production machines (column 12, lines 51-56), having an

industrial controller, comprising the step of: providing the industrial controller (Fig. 1, element 10) with a running system, the controller having prioritized running level (running level is some as priority level) and tasks, with at least one sequential running level being created (abstract, i.e. controlling industrial operations and processes, a complex control program is processed by a microprocessor of a controller 10 under real-time conditions. The complex control program is divided into tasks. Each task assigned a priority and activation event.), formulation a machine sequence in a sequential program (Fig. 5, Fig. 6, table 40, Fig. 7, column 7, lines 22-25; i.e., program sequence for fuel injection in an internal combustion engine.); the sequential program including specific mechanisms that enable a waiting for condition (Fig. 3) to be satisfied to be carried out with high priority and after the waiting condition has been satisfied, to carry out the subsequent program sequence with high priority up to a defined user-programmed end (column 2, lines 6-14; column 3, lines 49-54; column 4, lines 6-13; column 6, lines 1-10 and 50-57; column 11, lines 1-24; Fig. 3 and Fig. 8), the running levels being assigned system or user program (column 2, lines 39-58); utilizing the sequence program in the controller (Fig. 2; column 5, lines 50-55; i.e., program sequence in a motor vehicle controller).

Regarding claim 5, Hoenninger discloses the running levels are created from system levels or user levels (column 5, lines 5, line 50 - column 6, lines 10; column 9, lines 20-65; i.e., complex control program is usually subdivided into a number of different tasks... in this interrupt service routine, a check is performed to determine whether a new task should be activated at the current count of the time counter. To

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coordinate the task execute command, it is advantageous to assign a certain priority (running level) to the individual tasks (system level) to indicate the urgency of processing the task.)

Regarding claim 5, Hoenninger discloses the running level model is clock (column 7, lines 42-45; i.e., it is executed every 10 ms by time controlled method) and wherein the basic clock may be derived from any of an internal timer, internal clock of a communication medium, an external device or a variable which belongs to the technological process (Fig. 1, element 23, i.e., timer counter is some as internal timer).

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

8. Any inquiry concerning communication or earlier communication from the examiner should be directed to Kidest Bahta, whose telephone number is (703) 308-6103. The examiner can normally be reached on M-F from 7:30 a.m. to 4:00 p.m. If attempts to reach the examiner by phone fail, the examiner's supervisor, Leo Picard, can be reached (703) 308-0538. Additionally, the fax phone for Art Unit 2125 is (703) 308-6306 or 308-6296. Any inquiry of a general nature or relating to the status of this application should be directed to the group receptionist at (703) 305-9600.

Kidest Bahta



June 26, 2003